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16 FEDEX GROUND PACKAGE SYSTEM, INC.

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18 IN THE UNITED STATES DISTRICT COURT
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20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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22 SAN JOSE DIVISION
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PHILIP DOLAN, individually and on behalf of
others similarly situated,

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.,
a Delaware corporation; and DOES 1 through
100, inclusive,

Defendant.

Case No. 5:18-cv-06934-BLF

**DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.'S NOTICE
OF MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: November 4, 2021

Time: 9:00 a.m.

Judge: Hon. Beth Labson
Freeman

Courtroom: San Jose, 5th Floor,
Ctrm. 3

Removal: November 15, 2018

Trial Date: August 15, 2022

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 4, 2021, at 9:00 a.m. in Courtroom 3 (5th Floor) of this Court, located at 280 South 1st Street, San Jose, California 95113, FedEx Ground Package System, Inc. ("FedEx Ground") will and hereby does move for an order granting summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Brandy T. Cody, the Request for Judicial Notice, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

MOTION AND RELIEF REQUESTED

FedEx Ground moves for summary judgment because there is no genuine issue as to any material fact and FedEx Ground is entitled to summary judgment on Plaintiff Philip Dolan's ("Plaintiff") individual and class claims due to Plaintiff's settlement of his claims with his former employer, Yosemite IV, Inc.:

1. Plaintiff's individual claims are moot because there is no recovery the Court can award Plaintiff—Plaintiff, in return for compensation from his direct employer, released all claims he may have against his employer and FedEx Ground, waived all recovery of attorneys' fees, and waived his ability to represent a class and to participate in a class action.
2. Plaintiff's class claims are moot because Plaintiff is not an adequate class representative because Plaintiff expressly waived any ability he may have had to both represent a class and participate in a class action.

Dated: September 30, 2021

FISHER & PHILLIPS LLP

By: /s/ Brandy T. Cody

BRADY T. CODY

SEAN F. DALEY

Attorneys for Defendant

FEDEX GROUND PACKAGE SYSTEM, INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT AND RELEVANT FACTS**

3 This lawsuit arises out of Plaintiff's employment as a driver for Yosemite IV, Inc.
4 ("Yosemite")—an independent business entity with which FedEx Ground contracted for package
5 pick-up and delivery services. Claiming that FedEx Ground was his joint employer with Yosemite,
6 Plaintiff seeks to recover overtime pay and unpaid minimum wages under California law, premium
7 pay for missed meal and rest periods, relief under derivative claims for penalties related to
8 separation pay, penalties for non-compliant wage statements, and reimbursement of business
9 expenses. *See* ECF No. 55. Plaintiff also seeks to represent a proposed class defined as follows:

10 All individuals who were employed as pick-up and delivery truck drivers, or in
11 other similar positions, by Yosemite IV, Inc., a contracted service provider that
12 contracted to provide pickup and delivery services for FedEx Ground Package
 System, Inc., in California during the relevant time period.

13 *See* ECF No. 55 at 4.

14 However, both Plaintiff's individual and class claims fail as a matter of law.¹ On March
15 8, 2021, Plaintiff and Yosemite voluntarily executed a settlement agreement and general release.
16 As part of that agreement, Plaintiff released all of his claims against not only Yosemite, but also
17 FedEx Ground:

18 Releasees are released from all claims and rights of any kind that Plaintiff may have
19 based on any events or circumstances arising or occurring on or before the date of
20 Plaintiff's execution of this Release, whether now known or unknown, suspected
21 or unsuspected, including, without limitation, any claim related to the *Dolan* Case,
 either as an individual or as a putative class representative, or Plaintiff's work for
 the Company, Nguyen and/or FedEx.

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25 ¹ FedEx Ground disputes that it could be found to be Plaintiff's joint employer, but does not
26 seek summary judgment on that component of Plaintiff's claims. This motion instead focuses on
27 Plaintiff's lack of standing to assert any claims at all. FedEx Ground reserves the right to assert
28 additional defenses to Plaintiff's claims in the event this matter proceeds for any reason.

1 Request for Judicial Notice, filed and served herewith (hereinafter, “RJN”), ¶ 1, Exhibit 1
2 (Settlement Agreement and General Release).² Plaintiff also agreed “that he has received all wages
3 due and owing to him.” *Id.*, ¶ 1(b). In other words, Plaintiff agreed to release Josemite, Josemite’s
4 owner (Long Nguyen), and FedEx Ground from any and all claims, whether known or unknown,
5 that Plaintiff may have, including any claims Plaintiff may have related to the instant case either
6 as an individual or as a putative class representative, and agreed that he received pay for all unpaid
7 wages.

8 Plaintiff’s release of claims also included any claims for expenses, including attorney’s
9 fees and legal expenses. *See, e.g., id.*, ¶ 1(a) (“The parties agree they shall bear their own costs
10 and attorneys’ fees with respect to any and all claims encompassed by the terms of this Release.”);
11 *id.* ¶ 2 (“Plaintiff agrees this is a General Release, which to the fullest extent permitted by law,
12 waives and releases all claims against the Releasees, including but not limited to . . . expenses
13 (including attorneys’ fees and legal expenses) . . .”). Finally, Plaintiff agreed: “[Y]ou waive any
14 right or ability to be a class or collective action representative or to otherwise participate in any
15 putative or certified class, collective or multi-party action . . .” *Id.*

16 Despite settling with Josemite and releasing his claims against FedEx Ground, Plaintiff has
17 made no attempt to dismiss this action and would not agree to stipulate to dismiss this action,
18 necessitating the instant motion. Declaration of Brandy T. Cody, filed and served herewith
19 (hereinafter, “Cody Decl.”), ¶¶ 2, 4. Plaintiff also failed to file his motion for class certification
20 on May 14, 2021, when it was due. Cody Decl., ¶ 3; *see also* ECF Nos. 62 and 63.

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24 ² Pursuant to Federal Rules of Evidence 902(8), a “document accompanied by a certificate of
25 acknowledgment that is lawfully executed by a notary public” is self-authenticating and requires
26 no extrinsic evidence of authenticity in order to be admitted. The Settlement Agreement and
27 General Release executed by Plaintiff and Josemite’s CEO Long Nguyen was notarized by a
28 California notary public on March 8, 2021.

II. SUMMARY JUDGMENT STANDARD

The “purpose of summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” *Matsuhita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted). Summary judgment is appropriate where there is “no genuine issue of material fact” and the moving party is “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). When the moving party makes a properly supported summary judgment motion, the nonmoving party “must present affirmative evidence in order to defeat [it].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

III. LEGAL ARGUMENT

A. FedEx Ground is Entitled to Summary Judgment on Plaintiff's Individual Claims

The Constitution limits the scope of federal judicial power to designated “cases” and “controversies.” U.S. Const., Art. III, § 2. Thus, federal courts do not have the power to decide questions of law in a vacuum and they may only determine such matters as arise in the context of a genuine “case” or “controversy” within the meaning of Article III. *SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 407 (1972). As such, the federal court has no authority to give opinions upon moot questions. *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000).

“A case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Id.* The central issue in any mootness challenge is whether the Court can award any meaningful relief. Unless the prevailing party can obtain effective relief, any opinion as to the legality of the challenged action would be advisory. *Id.*; *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009) (no standing where injury is remedied).

In *Campbell-Ewald Co. v. Gomez*, the Supreme Court reiterated the constitutional requirement that a case or controversy must exist at all stages of the litigation. 577 U.S. 153 (2016). Specifically, the Court stated that “[i]f an intervening circumstance deprives the plaintiff of a ‘personal stake in the outcome of the lawsuit,’ at any point during litigation, the action can no

1 longer proceed and must be dismissed as moot.” *Id.* (emphasis added).

2 Here, Plaintiff voluntarily settled his claims and agreed to release FedEx Ground from any
3 and all claims, whether known or unknown, that Plaintiff may have, including any claims Plaintiff
4 may have related to the instant case either as an individual or as a putative class representative.
5 This was a voluntary, intervening circumstance depriving Plaintiff of a personal stake in the
6 outcome of the lawsuit. Accordingly, Plaintiff’s individual claims should be dismissed as moot
7 pursuant to the terms of the settlement agreement between Plaintiff and Josemite, as there is no
8 recovery the Court can award to Plaintiff with respect to these claims.

9 **B. Plaintiff’s Class Claims Are Also Moot Because Plaintiff Is Not An Adequate**
10 **Class Representative**

11 The Supreme Court has long recognized that a named plaintiff cannot represent a putative
12 class absent an individualized injury sufficient to demonstrate the existence of an Article III case
13 or controversy. *See O’Shea v. Littleton*, 414 U.S. 488, 494 (1974) (“if none of the named plaintiffs
14 purporting to represent a class establishes the requisite of a case or controversy with the defendants,
15 none may seek relief on behalf of himself or any other member of the class”); *Simon v. Eastern*
16 *Kentucky Welfare Rights Orgs.*, 426 U.S. 26, 40 n. 20 (1976) (“[t]hat a suit may be a class action
17 . . . adds nothing to the question of standing, for even named plaintiffs who represent a class ‘must
18 allege and show that they personally have been injured, not that injury has been suffered by other,
19 unidentified members of the class to which they belong and which they purport to represent’”) (quotation omitted); *see also, Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66 (2013) (“the mere
20 presence of collective-action allegations in the complaint cannot save the suit from mootness once
21 the individual claim is satisfied”). Moreover, a lack of Article III jurisdiction cannot be cured
22 through class certification, as the Federal Rules of Civil Procedure “do not extend or limit the
23 jurisdiction of the district courts.” Fed. R. Civ. P. 82. Thus, Plaintiff’s lack of any injury for his
24 individual claims precludes him from representing a purported class on such claims.
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26 The unnamed class members who have not appeared in this action will not be prejudiced
27 by a dismissal of these causes of action. Such a dismissal has no binding effect on the other
28 members of the putative class who have no notice of the action and are not considered parties to it

1 for purposes of res judicata or collateral estoppel. *See Aguilera v. Pirelli*, 223 F.3d 1010, 1013 n.
2 1 (9th Cir. 2000) (“When a motion is maintained against an uncertified class, only the named
3 plaintiffs are affected by the ruling.”); *see also Villagrana v. Graham*, 60 Fed. Appx. 713, 715
4 (10th Cir. 2003); *Chevron U.S.A., Inc. v. Sch. Bd. Yermilion Parish*, 294 F.3d 716, 720 (5th Cir.
5 2002). Indeed, the putative class members are not yet parties because no class has been certified.
6 *See Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011) (Kagan, J.) (referencing “the novel and surely
7 erroneous argument that a nonnamed class member is a party to the class-action litigation *before*
8 *the class is certified*”) (citation omitted) (emphasis by the Court). The Court therefore need not
9 consider whether it would be proper to certify a class.

10 The recent decision by the Ninth Circuit Court of Appeals in *Brady v. AutoZone Stores,*
11 *Inc.*, 960 F.3d 1172 (2020), is instructive. In *Brady*, the Ninth Circuit decided the question of what
12 happens when a class representative voluntarily settles only his individual claims without
13 indicating any financial stake in the unresolved class claims. *Brady*, 960 F.3d at 1173. The Court
14 concluded:

15 In sum, we hold that when a class representative voluntarily settles his individual
16 claims, he must do more than expressly leave class claims unresolved to avoid
17 mootness. A class representative must also retain—as evidenced by an
18 agreement—a financial stake in the outcome of the class claims. Absent such a
19 stake, a class representative's voluntary settlement of individual claims renders
20 class claims moot.

21 *Id.* at 1175.

22 Here, just as in *Brady*, Plaintiff’s settlement agreement with Josemite does not indicate he
23 will receive any additional compensation for the class claims. In fact, the settlement agreement
24 Plaintiff agreed to stated that he released “any claim related to the *Dolan* Case, either as an
25 individual or as a putative class representative . . .” RJN, Exhibit 1, ¶ 2 (emphasis added). Plaintiff
26 also expressly gave up “any right or ability to be a class or collective action representative or to
27 otherwise participate in any putative or certified class, collective or multi-party action or
28 proceeding . . .” *Id.* at ¶ 2. Moreover, Plaintiff agreed several times in the Settlement Agreement
that he released all claims for “expenses (including attorneys’ fees and legal expenses).” *Id.* at ¶ 2.
While Plaintiff may not have resolved the class claims, he certainly did not retain any financial

1 stake in them. There is no basis on which to allow Plaintiff, after his claims have been mooted, to
2 seek to represent the putative class of which he is not a member and for which he agreed not only
3 to not represent, but also to not participate. Accordingly, as in *Brady*, those class claims are moot
4 and should be dismissed.

5 **IV. CONCLUSION**

6 For the reasons stated above, FedEx Ground respectfully requests that the Court grant
7 FedEx Ground summary judgment on all of Plaintiff's claims.

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9 Dated: September 30, 2021

FISHER & PHILLIPS LLP

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11 By: /s/ Brandy T. Cody

BRADY T. CODY

SEAN F. DALEY

Attorneys for Defendant

FEDEX GROUND PACKAGE SYSTEM, INC.